IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.431 OF 2003

The State of Maharashtra & Ors. ...Petitioners.
Vs.
Shri Vasant Annappa Kamble. ...
Respondent. ....

Mr. C.R. Sonawane, AGP for the Petitioners.
MrN. V. Bandiwadekar for the Respondent.
.....

**CORAM : F.I. REBELLO, J. AND**
**DR.D.Y.CHANDRACHUD, J.**

**January 16, 2006**.

**P.C. (Per Dr. D.Y. Chandrachud, J.) :**

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent of Counsel and at their request taken up for hearing.

The Respondent was initially recruited as a Peon in the Planning Department of the State Government in 1980. He was appointed as a clerk on 1st December 1983. The Respondent was transferred to the District Collector's office at Kolhapur on 15th

September 1984 where his services came to be terminated on 21st October 1987 due to the 'Zero Based Budget'. He was reappointed on 2nd November 1987 in the office of the Tahsildar, Kagal. The Respondent was transferred to Mumbai as a clerk on 13th May 1988. The break in service was condoned on 26th June 1990 by treating it as extraordinary leave under the relevant Rules. The Respondent was, therefore, granted continuity for all purposes from the date of his initial appointment. On 13th March 1991, the Respondent was informed that since he had not passed the examination prescribed by the Maharashtra Government Subordinate Secretariat Service (Lower Division Clerks) Posts Recruitment Training Examination Rules, 1977 within four years and three chances, his yearly increment would be withheld till he did so. The Respondent was successful at the examination conducted on 21st June 1991 and on 30th July 1996 he was given promotion under the Time Bound Promotion Scheme applicable to Government servants who have completed 12 years' of regular service in Class III in the same pay scale. Subsequently, on 4th November 1999 that decision was cancelled and the Respondent's salary was refixed.

The Respondent moved the Administrative Tribunal. The Administrative Tribunal has noted that in the proceedings before it, the issue did not relate to the loss of seniority, or otherwise, of the Respondent. The break in service, the Tribunal noted, was admittedly condoned on 30th July 1996. In the circumstances, the Respondent must be regarded as having completed 12 years' regular service from the date of his appointment as Junior Clerk on 1st December 1983. In view of the decision of the Supreme Court in **Dwijan Chandra Sarkar vs. Union of India,** (1999) 2 SCC 119, the Tribunal held that the cancellation of the Time Bound Promotion was not sustainable.

While opposing the application filed on behalf of the Applicant before the Administrative Tribunal, the State Government averred that under a notification dated 6th June 1997, the Maharashtra Government Subordinate Secretariat Service (Lower Division Clerks) Posts Recruitment Training Examination Rules, 1977 were brought into force. Under Rule 3 of the Rules that were notified, every Lower Division Clerk is required to pass the examination prescribed within four years from the date of his appointment as a Lower Division Clerk and within three chances.

Under Rule 5, a clerk who fails to pass the examination within the time limit and chances, shall not until he passes the examination, be confirmed in the post of Lower Division Clerk and the increments due will be withheld. Such increments shall become payable with effect from the date he passes the examination and future increments shall accrue as if no increment has been withheld. Moreover, such a clerk loses his seniority in the cadre of Lower Division Clerk, that is to say, he will rank below all such clerks who have passed the examination before him and also below all those who are senior to such Lower Division Clerk below whom he is placed, and who may pass the examination after him but within the period and chances specified in rules. The Respondent, it was averred, had not passed the examination within the prescribed period and chances. The Government further referred in its affidavit in reply to a notification dated 8th June 1995 under which a higher pay scale in promotional posts is provided upon the completion of 12 years of service. Para 2(b) of the circular for the grant of higher pay scales as part of a time bound scheme inter alia clarifies that in order to obtain the benefit of the higher pay scale all the conditions prescribed for promotion including seniority, eligibility and the passing of the prescribed

examination are necessary. If a person has not passed the qualifying examination within the prescribed chances and time limit, that person would lose his seniority. The revised seniority of such a person has to be fixed and the benefit of a time bound promotion would be given to him if he is eligible from the date on which his junior is given the benefit of time bound promotion. In the present case, it has been stated that the Respondent was required to pass the examination. However, he passed the examination only in June 1991 after the prescribed time limit and chances which would cause him to lose his seniority. Accordingly, the General Administration Department gave him a revised date of seniority from 16th December 1999. The benefit of the time bound promotion which was given to him on 1st December 1995 was not in order in view of the clarification contained in the G.R. of 20th March 1997 and the order granting him the benefit of time bound promotion came to be cancelled on 4th November 1999.

Now, a perusal of the judgment of the Tribunal in the present case would demonstrate that the Tribunal has entirely proceeded on the basis of the concept underlying a scheme for time bound promotion and in that regard relied upon the judgment

of the Supreme Court in **Dwijen Chandra Sarkar vs. Union of India,** (1999) 2 SCC 119. As the Supreme Court held, the objective of a time bound promotion scheme is that where there are a large number of employees in any Department who are not likely to get promotion in the near future because of their comparatively low position in the seniority list, the Government in order to remove frustration allows to such employees a higher grade in terms of emoluments while retaining them in the same category. Of this principle, there can be no dispute. The Tribunal, however, has not considered the conditions which were laid down by the State Government in its G.Rs. dated 8th June 1995 and 20th March 1997 in regard to the eligibility for availing of the scheme enunciated therein. Para 2(b) of the notification dated 8th June 1995 classifies that in order to obtain the benefit of a higher pay scales, all the conditions prescribed for promotion including seniority, eligibility and the passing of the examination are necessary. This has evidently been overlooked by the Tribunal.

In these circumstances, we are of the view that the matter would warrant a fresh determination by the Tribunal on the basis of the material on the record particularly having regard to the

terms of the aforesaid Government Resolutions. In order to enable a fresh determination by the Tribunal, we quash and set aside the impugned order dated 27th April 2001 and restore Original Application 144 of 2001 filed by the Respondent to the file of the Tribunal. The Tribunal shall hear the parties and dispose of the Original Application. We clarify that we have kept open all the contentions between the parties. The Tribunal would be at liberty to consider whether in any event it would be appropriate to permit the Government to make recoveries at this stage from the Respondent. The Petition shall stand disposed of in these terms. There shall be no order as to costs.

( F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)